

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BEVERLY HARRIS,)	
)	
Plaintiff,)	Civil Action No. 16-416
)	District Judge Nora Barry Fischer
v.)	Magistrate Judge Lisa Pupo Lenihan
)	
DOLGENCORP, LLC,)	
and PAMELA BIEGEL,)	
)	
Defendants.)	

MEMORANDUM ORDER

A Motion for Summary Judgment with brief in support, appendix, and concise statement of material facts was filed by Defendants on August 8, 2017. (Docket Nos. 57, 59, 61, 62). On September 7, 2017, Plaintiff filed her responsive brief, appendix, and concise statement of material facts. (Docket Nos. 63, 64, 65). On September 22, 2017, Defendants filed their reply brief and response to Plaintiff's statement of additional facts. (Docket Nos. 66, 67). The motion was referred to United States Magistrate Judge Lisa Pupo Lenihan in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D. Magistrate Judge Lenihan held oral argument on the motion on November 2, 2017. (Docket No. 75).

The Magistrate Judge's Report and Recommendation (Docket No. 76) filed on December 4, 2017, recommended that the motion for summary judgment be granted only as it relates to the state law claim of intentional infliction of emotional distress, and denied in all other respects. Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2, the parties had fourteen (14) days from the date of service to file objections to the Report and

Recommendation. On December 18, 2017, Defendants filed objections and a supporting brief. (Docket Nos. 78, 79). The Court granted Plaintiff an extension of time in which to file her response to Defendants' objections and on January 9, 2018, Plaintiff filed her response and brief in opposition to Defendants' objections. (Docket Nos. 82, 83, 84)

After review of the pleadings, documents in the case, Defendants' objections, and Plaintiff's response, together with the Report and Recommendation, the Court rejects Defendants' contention that the Report and Recommendation "ignore[d] all persuasive authority" relative to Plaintiff's claims under 42 U.S.C. §§ 1981 and 1982. (Docket No. 79 at 2). In making this argument, Defendants improperly focus on each factual dispute in isolation. *See Abramson v. William Paterson College of New Jersey*, 260 F.3d 265, 286 (3d Cir. 2001) (explaining that courts should not consider the summary judgment record in piecemeal fashion because a jury is entitled to view the evidence as a whole.) (citation omitted). Upon consideration of the record as a whole, the Court agrees with the Report and Recommendation that there are "several disputed issues of material fact, that when viewed in the light most favorable to Plaintiff, could result in a jury verdict for Plaintiff." (Docket No. 76 at 9-10). Accordingly, the Court overrules Defendants' objections that there is no evidence in the record to support a finding that they prevented Plaintiff from (1) completing her intended purchase (2) on the basis of her race. (Docket Nos. 78, 79). Therefore, the Court enters the following Order.

AND NOW, this 23rd day of January, 2018,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment [57] is GRANTED only as it relates to Plaintiff's claim for intentional infliction of emotional distress. The Motion is DENIED in all other respects.

IT IS FURTHER ORDERED that Defendant's Objections [78] to the Report & Recommendation are OVERRULED.

IT IS FURTHER ORDERED that the Report and Recommendation [76] of Magistrate Judge Lenihan, dated December 4, 2017, is adopted as the Opinion of the Court.

/s/ Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc/ecf: All counsel of record.